

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 787 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MODI BACHUBHAI SAKALCHAND

Versus

PRANLAL NANDLAL

Appearance:

PARTY-IN-PERSON for Petitioner
PARTY IN PERSON for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/08/2000

ORAL JUDGEMENT

The petitioner has submitted an amendment application. With the consent of the other side it is allowed. The petitioner is directed to amend the petition accordingly during the course of the day.

2. The petitioner-original plaintiff has filed this petition challenging the orders passed by the learned Judge, Small Cause Court, Ahmedabad, below Exh.108 whereby he rejected the witness summons application. Thereafter, plaintiff submitted an application Exh.110 and made request that he wants to prefer appeal against the order dated 25-4-2000, passed by the learned Judge, Small Cause Court, Ahmedabad, but he could not do the same because certified copy of the order was not available to him. However, the said application Exh.110 was also rejected by the Court below on the same day. Over and above, the Court has also closed the rights of the plaintiff to cross-examine the defendant and, therefore, the petitioner has filed this petition.

3. This Court on 14-8-2000 issued notice making it returnable on 24-8-000 and in pursuance of the said notice, the respondent- Pramlal Nandlal appeared in person. It transpires from the record and proceedings that present respondent-original defendant has submitted an application Exh.58 before the Court below wherein he prayed for amendment in written statement to the effect that the plaintiff has sold the property in question by way of registered sale deed No.2266 on 19-7-99. The said amendment application was submitted by the respondent-defendant after the plaintiff submitted pursis for closing the oral evidence and, therefore, rights of the plaintiff to lead any evidence to that effect were reserved by the Court below and in pursuance of that the plaintiff again entered into the witness box. But thereafter, the plaintiff has not taken proper care in the matter and, therefore, said application of witness summons has been rejected by the Court below. Looking to the facts and circumstances of the case as aforesaid, I do not find any illegality in the order passed by the Court below as it is established from the record and proceeding that sufficient opportunities have been given to the plaintiff, but he could not avail the same and matter has been delayed since long. Over and above, the above rights were given for limited purpose and same were utilised by the petitioner. However, the fact remains that the Court below has closed the rights of the petitioner-plaintiff to cross-examine the defendant and, therefore, the said order is required to be rejected in view of the facts and circumstances of the case. The respondent-defendant has made a statement at the bar that he will remain present before the Court below and will make him available for the purpose of cross-examination. Therefore, I pass the following order.

4. The order passed by the Court below below Exh.110

closing the rights of the petitioner to cross-examine the respondent-defendant is quashed and set aside. The Court below is hereby directed to permit the petitioner-plaintiff to cross-examine the respondent-defendant and to proceed further in the matter.

5. Subject to the aforesaid directions, this petition is partly allowed. Rule made absolute to the aforesaid extent. Interim relief granted by this Court on 24-8-2000 stands vacated.

(R.P.Dholakia, J.)

*mithabhai